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November 9, 2017

**BY ELECTRONIC FILING**

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, DC 20554

**Re: *Ex Parte* Communication in GN Docket No. 16-142**

Dear Ms. Dortch:

On November 7, 2017, Michael Nilsson of Harris, Wiltshire & Grannis LLP and I spoke by telephone with Alison Nemeth of Chairman Pai's office and Nirali Patel of Commissioner Carr's office to discuss the ATSC 3.0 transition. On November 8, we spoke by telephone with Brooke Ericson of Commissioner O'Rielly's office. We discussed the following two issues:

- **Material degradation.** We urged the Commission to clarify that cable operators and broadcasters can lawfully agree in retransmission consent agreements to the downconversion of ATSC 3.0 signals, notwithstanding the "material degradation" provisions in the Communications Act.<sup>1</sup> Broadcasters have argued, incorrectly, that cable operators cannot agree with stations to downconvert broadcast signals. Yet downconversion will be necessary in the transition to ATSC 3.0—and, indeed, is the first subject discussed by ATSC subcommittee dealing with MVPD redistribution. For example, if a station's simulcast signal cannot reach a small cable system, that cable operator will have to downconvert ATSC 3.0 signals in order to serve its customers with existing equipment. The law cannot reasonably be read to prevent a small cable system and a broadcaster from agreeing to such an arrangement.

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<sup>1</sup> See Comments of the American Cable Association at 14 (filed May 9, 2017) ("ACA Comments"); Letter from Ross Lieberman to Marlene Dortch at 1-2 (filed Oct. 24, 2017). Unless otherwise indicated, each document referenced in this letter was filed in GN Docket No. 16-142.

ACA urges the Commission to eliminate any confusion by providing clarity on this matter. It could add, as a footnote to the first sentence of paragraph 77 of the draft order, the following: “We agree with ACA that stations electing retransmission consent would not violate the ‘material degradation’ provisions of Section 614 of the Act by entering into agreements allowing an MVPD to distribute an ATSC 3.0 signal in a lesser format or lower resolution.”

- **Expedited processing.** We noted the ongoing debate between MVPDs and broadcasters with respect to which stations should be eligible for “expedited processing” of simulcast applications. ATVA, of which ACA is a member, believes that expedited processing is only appropriate in circumstances involving minimal service loss.<sup>2</sup> Broadcasters, by contrast, believe that stations should receive expedited processing even in cases of significant service loss.<sup>3</sup>

Notwithstanding the debate over when expedited processing is appropriate, even “expedited processing” must give the public both sufficient information to understand what may happen to them (without having to hire a broadcast engineer) and sufficient time to comment if they wish. Thus, all stations—including those receiving expedited processing—should submit “before and after” coverage maps or other information that clearly specifies and details the areas of coverage loss in an easy-to-understand manner (in addition to whatever else the Commission requires). And expedited processing should contemplate a slightly longer time period for grant than specified in the draft order—45 days rather than 15, for example.<sup>4</sup> Such processing times, which still fit the definition of “expedited” by any reasonable measure, will give the public a meaningful opportunity to participate without materially disrupting any broadcaster’s business plans. Nor will such a timeframe delay the overall transition, which is expected to last for years.

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<sup>2</sup> Letter from Michael Nilsson to Marlene Dortch at 8, GN Docket No. 16-142 *et al.* (filed Nov. 3, 2017).

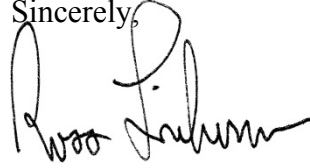
<sup>3</sup> Letter from Patrick McFadden to Marlene Dortch at 2 (filed Nov. 6, 2017).

<sup>4</sup> Draft ATSC 3.0 Order ¶ 34.

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In accordance with the Commission's rules, I will file a copy of this letter electronically in the docket listed above.

Sincerely,

A handwritten signature in black ink, appearing to read "Ross J. Lieberman". The signature is fluid and cursive, with a large initial "R" and a distinct "J" and "L".

Ross J. Lieberman

cc (*via email*): Alison Nemeth  
Nirali Patel  
Brooke Ericson